



Legal Update

March 22, 2012

The Sixth Amendment Right to Counsel and Plea Agreements

On March 21, 2012, the United States Supreme Court decided two cases by 5-to-4 votes: Missouri v. Frye (No. 10-444, 566 U.S. ____ (2112)) and Lafler v. Cooper (No. 10-209, 566 U.S. ____ (2012)). Both cases involved criminal defendants who sought to redress their non-acceptance of plea agreements because of inadequate counsel. In Missouri v. Frye, defense counsel failed to inform the defendant of the plea offer. In Lafler v. Cooper, on the advice of counsel, the defendant rejected a plea bargain. Noting that guilty pleas are the basis of 97% of federal convictions and 94% of state convictions, the Court stated that “[p]lea bargains have become so central to today’s criminal justice system that defense counsel must meet responsibilities in the plea bargain process to render the adequate assistance of counsel that the Sixth Amendment requires at critical stages of the criminal process.” This Legal Update simply conveys the cases’ holdings; please read the Court’s opinions.

Missouri v. Frye

Frye was charged with a felony for driving with a revoked license (because he had been convicted of the same offense three times prior). Under Missouri law, the felony charge carried a maximum four-year prison sentence. In a letter to Frye’s attorney, the prosecutor offered, in exchange for a guilty plea, to reduce the charge to a misdemeanor and to recommend a 90-day sentence. Frye’s attorney never conveyed the offer to him, and the offer expired. Just prior to his preliminary hearing, Frye again was arrested for driving with a revoked license. Frye pleaded guilty to the felony and was sentenced to three years in prison.

In Missouri v. Frye, the Court held:

1. The Sixth Amendment right to effective assistance of counsel extends to the negotiation and consideration of lapsed or rejected plea offers.

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2. “To show prejudice where a plea offer has lapsed or been rejected because of counsel’s deficient performance, defendants must demonstrate a reasonable probability both that they would have accepted the more favorable plea offer had they been afforded effective assistance of counsel and that the plea would have been entered without the prosecution’s canceling it or the trial court’s refusing to accept it, if they had the authority to exercise that discretion under state law.”

After the plea was offered and it had expired, Frye again was charged with driving with a revoked license. Therefore, it is questionable whether the prosecution would have abided by the plea offer or the trial court would have accepted it. The Court vacated and remanded the case.

The dissenting opinion noted, “The plea-bargaining process is a subject worthy of regulation, since it is the means by which most criminal convictions are obtained. It happens not to be, however, a subject covered by the Sixth Amendment, which is concerned not with the fairness of bargaining but with the fairness of conviction.”

Lafler v. Cooper

Cooper was charged with assault with intent to murder and three other charges. In exchange for a guilty plea, prosecutors offered to dismiss two of the charges and to recommend a 51-to-85-month sentence on the other two charges. After initially admitting guilt and expressing his intent to accept the offer, Cooper ultimately rejected the plea, allegedly because his attorney convinced him that prosecutors could not prove assault with intent to murder. After a trial, Cooper was convicted of all charges and sentenced to a mandatory minimum 185-to-360-month sentence. Before the Supreme Court, all parties agreed that Cooper’s attorney performed deficiently by advising him to reject the plea because he could not be convicted at trial.

In Lafler v. Cooper, the Court held:

1. “Where counsel’s ineffective advice led to an offer’s rejection, and where the prejudice alleged is having to stand trial, a defendant must show that but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer’s terms would have been less severe than under the actual judgment and sentence imposed.”
2. “Where a defendant shows ineffective assistance has caused the rejection of a plea leading to a more severe sentence at trial, the remedy must ‘neutralize the taint’ of a constitutional violation, but must not grant a windfall to the defendant

or needlessly squander the resources the State properly invested in the criminal prosecution.” (Citations omitted).

The Court found that Cooper demonstrated that, but for his attorney’s ineffective performance, it was likely that both he and the court would have accepted the plea. By not accepting the plea and being convicted at trial, Cooper’s sentence was 3 ½ times greater than he would have received under the plea. The Court vacated and remanded the case. The Court indicated that the proper remedy is to order the state to reoffer the plea. If Cooper accepts the plea offer, then the trial court can decide whether to vacate some or all of the convictions and resentence according to the plea, or to leave the trial results intact.

The dissenting opinion acknowledged the Court’s precedent that the *acceptance* of a guilty plea is a “critical stage” at which the right to counsel attaches, but here the majority “invented a right to effective plea bargaining.” There is no constitutional right to a plea bargain, and as such, counsel’s mistakes in this case did not “deprive the defendant of a substantive or procedural right to which the law entitles him.”